

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TAMARA JO SKINNER,

Plaintiff,

CASE NO. 2:23-cv-155

v.

HON. ROBERT J. JONKER

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Vermaat’s Report and Recommendation in this matter (ECF No. 22) and Plaintiff’s Objections thereto (ECF No. 23). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on *de novo* reconsideration, he or she finds it justified.” 12 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3070.2 (3d ed. June 2024 update). Specifically, the Rules provide that:

The district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). *De novo* review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

On August 28, 2024, this Court determined that it was unable to trace the path of the ALJ’s reasoning with respect to a July 15, 2021 Psychological Medical Report and reversed and

remanded the Commissioner's decision in accordance with sentence four of 42 U.S.C. § 405(g). (ECF No. 17, PageID.939). On November 26, 2024, Plaintiff moved for attorney's fees under the Equal Access to Justice Act (EAJA). (ECF No. 19). The Magistrate Judge recommends that the Court deny Plaintiff's motion for attorney's fees because the ALJ's error was one of articulation rather than substance. (ECF No. 22, PageID.1004-1005). The Court has reviewed *de novo* the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that the Magistrate Judge's Report and Recommendation is factually sound and legally supported and denies Plaintiff's motion for attorney's fees.

As indicated by the Magistrate Judge, not every order reversing and remanding the Commissioner's decision gives way to attorney's fees under the EAJA. *Couch v. Sec'y of Health & Hum. Servs.*, 749 F.2d 359, 360 (6th Cir. 1984); *DeLong v. Comm'r of Soc. Sec. Admin.*, 748 F.3d 723, 727 (6th Cir. 2014). For instance, an award of attorney's fees is not appropriate where the Commissioner's decision is reversed and remanded based solely on the ALJ's failure to explain his findings. *See Fish v. Comm'r of Soc. Sec.*, No. 1:18-CV-1257, 2020 WL 6785402, *2 (W.D. Mich. Oct. 26, 2020), *report and recommendation adopted*, No. 1:18-CV-1257, 2020 WL 6781481 (W.D. Mich. Nov. 18, 2020). That is precisely what happened here; the Court reversed and remanded the Commissioner's decision because it was unable to trace back the ALJ's findings with respect to the July 15, 2021 Psychological Medical Report. As such, Plaintiff is not entitled to attorney's fees under the EAJA.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 22) is **APPROVED** and **ADOPTED** as the opinion of this Court.

2. Plaintiff's motion for attorney's fees under the EAJA (ECF No. 19) is respectfully
DENIED.

IT IS SO ORDERED.

Dated: March 26, 2025

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE